

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } No. 97-433

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED  
WORK SCHEDULES ACT OF 1982

FEBRUARY 22, 1982.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Ms. FERRARO, from the Committee on Post Office and Civil Service,  
submitted the following

REPORT

[To accompany H.R. 5366]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 5366) to amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 4, line 7, insert "(a)" after "6130".

EXPLANATION OF AMENDMENT

The amendment to page 4, line 7, corrects a typographical error in the introduced bill.

PURPOSE

H.R. 5366 would encourage and permit the use of a broad range of flexible and compressed work schedules in the Federal Government.

COMMITTEE ACTION

H.R. 5366 was introduced by Ms. Ferraro, Chairwoman of the Subcommittee on Human Resources, on January 27, 1982.

The subcommittee held an oversight hearing (Serial No. 97-28) on April 3, 1981, in Denver, Colorado, on the alternative work schedules (AWS) being used under the Federal Employees Flexible and Com-

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pressed Work Schedules Act of 1978 (Public Law 95-390). Hearings on H.R. 5366 (Serial No. 97-28) were held on February 3 and 9, 1982, in Washington, D.C. Testimony was received from Members of Congress and representatives of the General Accounting Office, the Office of Personnel Management, academia, Federal employee organizations, and private businesses. Additional statements were received from individuals, employee and business groups, and professional organizations.

On February 10, 1982, the Committee on Post Office and Civil Service ordered H.R. 5366, as amended, favorably reported by a voice vote.

#### SUMMARY

The bill, as reported, is identical in substance to the temporary authorization it replaces with the exception of one change required by enactment of the Civil Service Reform Act of 1978 (Public Law 95-454).

Specifically, H.R. 5366:

- Provides that the Office of Personnel Management (OPM) shall prescribe necessary regulations, provide assistance to agencies, and conduct periodic evaluations;

- Provides for negotiation of flexible and compressed work schedule programs in units where a labor organization has been accorded exclusive recognition;

- Subject to collective bargaining agreements, allows OPM or an agency to terminate a program if it is determined the program is not in the best interest of the public, the Government, or the employees;

- Allows individuals to elect arrival and departure times within established parameters consistent with agency requirements;

- Waives certain provisions of existing law relating to hours of work, overtime pay, compensatory time off, and premium pay for night and holiday work for employees under alternative work schedules, provides alternative means for determining these entitlements for those employees, and ensures an employee will receive premium pay for any work which constitutes "overtime" under an alternative work schedule;

- Allows employees to request personal hardship exemptions from participating in compressed schedule programs;

- Prohibits coercion concerning employees' rights to participate in flexible and compressed workweek programs; and

- Allows the carry-over of a limited number of "credit hours" from one pay period to the next.

#### STATEMENT

Experience in both the private and public sector shows that the use of AWS is beneficial to both management and employees. Ultimately the public, taxpaying or purchasing, benefits.

Management gains the flexibility to extend hours of operation, provide increased services, and make more efficient use of facilities and equipment. Employees gain the flexibility to mold work hours, within limits, to better accommodate personal needs, transportation

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schedules, and family life. Limited employee control over scheduling results in increased morale. These benefits are passed on to the public in the form of increased operational efficiency and better availability of services.

The Office of Personnel Management Interim Report on the Alternative Work Schedules Experimental Program authorized by Public Law 95-390 describes the various types of alternative work schedules as follows:

A. TYPES OF SCHEDULES

The Alternative Work Schedules (AWS) Experiment authorized under Public Law 95-390 refers to both flexible and compressed work schedules. Flexible work schedules allow employees to vary, within constraints set by the organization, the times they report for duty and depart from work. Compressed work schedules allow employees to complete the basic biweekly work requirement of 80 hours in less than 10 full workdays.

1. *Flexible work schedules*

Flexible work schedules, popularly called flexitime, refer to a variety of arrangements in which fixed times of arrival and departure are replaced by a working day composed of two different types of time—core time and flexible time. Core time is the designated period during which all employees must be present. Flexible time is designated as part of the schedule of working hours within which employees may choose their time of arrival at and departure from the work site within limits consistent with the duties and requirements of their positions. The only other requirement of flexitime is that employees must account for the *basic work requirement*. The basic work requirement is the number of hours, excluding overtime hours, which an employee is required to work or to otherwise account for by an appropriate form of leave. For example, a full-time employee is required to work 40 hours a week or 80 hours every two weeks. A part-time employee might be employed under an appointment which requires the employee to work 32 hours a week, or perhaps, 64 hours every two weeks.

Certain types of flexitime schedules, in which employees work 8 hours each day, but may vary their arrival and departure times with or without prior approval, have been used by Federal agencies since 1972. Public Law 95-390 has made possible the testing of more sophisticated flexitime schedules by introducing the concept of *credit hours*. Credit hours are any hours of work in excess of the basic work requirement that an employee elects to work on a given workday or in a given workweek in order to shorten the length of another workday or workweek. For instance, an employee could work 10 hours on one day in order to shorten the length of a subsequent workday, without gaining entitlement to overtime pay, or an employee could choose to work 50 hours in a particular workweek so as to gain the advantage of a shorter workweek of 30 hours the next week.

The following flexible schedules are being used in the AWS experiment:

*Flexitour.*—employee preselects starting time; may modify schedule with prior notification and approval of supervisor.

*Gliding schedule.*—within flexible bands, employee may vary starting time without prior notification or approval of the supervisor.

*Variable day.*—employee may vary the length of the workday as long as he/she is present for daily core time with limits established by the organization; must work or account for the basic work requirement, e.g., 40 hours per week for a full-time employee; credit hour carry-over between pay periods is limited to a maximum of 10 hours.

*Variable week.*—employee may vary the length of the workday and the workweek as long as he/she is present for daily (five days per week) core time; must work or account for the basic work requirement, e.g., 80 hours in a biweekly pay period for a full-time employee; credit hour carry-over is limited to a maximum of 10 hours.

*Maxiflex.*—employee may vary the length of the workweek and workday as long as he/she is present for core time which is scheduled on less than all five week days; must work or account for the basic work requirement, e.g., 80 hours in a biweekly pay period; credit hour carry-over is limited to a maximum of 10 hours.

Organizations varied in the specifics of implementing a schedule. For example, two organizations might both have had Maxiflex but differed in the total number of core hours, the number of days with core time, and the length of the flexible band. To simplify analysis and interpretation, the flexible schedules were grouped into two general types. They are Flexible-8 hour (F-8) and Flexible-Variable hours (F-V). The F-8 category included Flexitour and the Gliding Schedule. Both of these schedules allowed variability in starting times, but have a daily work requirement of 8 hours. The F-V hour category included Variable Day, Variable Week, and Maxiflex. These three schedules allowed employees to vary the number of hours worked in a day as well as the starting times. They all have either weekly or biweekly work requirements.

## *2. Compressed schedules*

Compressed work schedules may take a variety of forms. The most common compressed schedule is the four 10-hour day week, referred to as the 4-10 schedule. However, a compressed schedule is any schedule which enables the full-time employee to complete the basic work requirement of 80 hours in less than ten full workdays in each biweekly pay period. For employees working under compressed schedules overtime pay was continued for overtime hours which were officially ordered by an agency official and which exceeded the basic

work requirement. While compressed schedules had not generally been used in Federal agencies prior to the AWS experiment, private sector firms have used such schedules in computer operations, and to increase service to their customers (e.g., by splitting the work force with some employees working Monday through Thursday and others working Tuesday through Friday, an organization could be open to serve the public two additional hours each day).

Like flexible schedules, compressed work schedules may also take a variety of forms, but provisions for earning and accumulating credit hours do not apply. While some organizations, typically organizations operating 24 hours per day and/or 7 days per week, have used "unique" compressed schedules, the two most common types of compressed schedules are:

4-10.—employees work 10 hours per day, four days per week, for a 40-hour workweek. Employees have both a daily and a weekly basic work requirement.

5-4/9.—although there are variations of this plan, the most common approach is to have employees scheduled to work 9 hours a day during 8 days of a biweekly pay period and 8 hours on the ninth day. Employees have both a daily and biweekly basic work requirement.

#### PRIVATE SECTOR EXPERIENCE

Since the early 1970's, more and more private businesses have adopted a variety of flexible work schedules for employees. Today, it is estimated that nearly 10 million full-time workers enjoy flexible work schedules or compressed workweeks. These variations from the standard, fixed schedule eight-hour workday evolved as a means of coping with social change, particularly the dramatic increase of women in the work force, and the desire of all employees for a better accommodation between their working and personal lives. Employers found they benefited from higher usage of buildings and equipment, decreased traffic congestion, and improved attendance, punctuality, and morale. Because employees feel they have more control over their working lives, flexible schedules encourage workers to devote more responsibility to organizing their own work. Flexible schedules have also helped reduce the conflicts between work and personal needs, particularly for working women and others with household responsibilities.

#### THE FEDERAL EXPERIMENT

During the past three years more than 325,000 Federal employees in 1,500 organizations took part in a highly successful experimental alternative work schedules program authorized by the 95th Congress. The Federal Employees Flexible and Compressed Work Schedules Act of 1978 (Public Law 95-390) authorized experiments with a number of alternatives to the traditional fixed schedule eight-hour workday. The results of the experiment were reported in an Interim Report from OPM, and discussed in testimony before the subcommittee. There is widespread enthusiastic support for continuation of the program.

Public Law 95-390 required OPM to study the impact of AWS on Government efficiency, mass transit facilities and traffic, energy consumption, service to the public, increased employment opportunities, and quality of life for employees and their families. H.R. 5366 requires OPM to continue to review the effects of AWS in these six areas. Agencies should consider those areas, as well as other appropriate areas, as they develop alternative work schedule programs. The experiment has demonstrated that various alternative schedules produce benefits. Proper planning in the future will ensure benefits from AWS are maximized.

Although many benefits are difficult to measure, certain benefits such as increased hours of service, reductions in tardiness and absenteeism, and reduced energy consumption can be quantified. The committee believes OPM and the agencies should work harder to better quantify the effects of alternative work schedules in these areas.

The OPM study did point out overall increases in operational efficiency and hours of service to the public. Small reductions in total, i.e., work and nonwork related, vehicle miles travelled per week were noted, as well as increases in the use of mass transit and car/van pooling. Compressed schedules have the potential to reduce building energy consumption if buildings are closed down on nonwork days. AWS provided most employees with a greater feeling of control over their work lives and provided them with more time to devote to personal, family, cultural, and social activities. The OPM report also noted that over 90 percent of nonsupervisory employees and over 85 percent of supervisors were satisfied with and wish to retain AWS. Factors unrelated to AWS, e.g., hiring freezes, staffing reductions, and reorganizations, had greater impact on job opportunities than AWS. OPM found that all of the alternative work schedule types used in the experiment were successful in most situations from the perspective of both experimenting organizations and individuals.

H.R. 5366 does not require that measurable, quantifiable benefits be demonstrated for the establishment or continuation of alternative work schedules. Nonmeasurable benefits which flow from the use of AWS, such as improved employee morale, are clearly in the best interest of the public, the Government, and employees. In the absence of evidence of additional costs, substantial disruption, or adverse impact on the interests of the public, the Government, or employees, the committee believes the use of AWS are appropriate.

#### COLLECTIVE BARGAINING

There has been some confusion over the extent to which alternative work schedules fall within the scope of bargaining under appropriate provisions of title VII of the Civil Service Reform Act of 1978 (Public Law 95-454) (5 U.S.C. ch. 71). Section 6130(a) of title 5, United States Code, as added by H.R. 5366, provides that employees in a unit represented by a labor organization may be included under an alternative work schedules program only to the extent expressly provided in a collective bargaining agreement. This clearly contemplates that the introduction, implementation, and administration of an AWS program is within the scope of bargaining under title VII, and the provisions of title VII relating to collective bargaining govern. Similarly, sections 6122(b) and 6127(c) of title 5, as added

by the bill, which provide authority for the Office of Personnel Management to terminate alternative work schedule programs, both provide that any termination is subject to the terms of any applicable collective bargaining agreement. This means that where a collective bargaining agreement addresses the issue of termination of an alternative work schedules program, OPM's authority is limited by the terms of that agreement.

#### ACCOUNTABILITY

Because employees working flexible schedules will arrive and depart at varying times, the committee believes it is important that a system exist for providing accountability for hours worked to ensure the credibility of the program from the perspective of employees, management, and the public. One such system, for example, could be a sequential sign-in, sign-out sheet. However, since different work units have different problems, the committee is reluctant to legislatively require a uniform system for time accountability.

The subcommittee has directed the General Accounting Office to incorporate into its Policy and Procedures Manual time accounting standards for executive agencies using flexible schedules. In addition, the committee expects OPM's periodic reviews under section 6132 to include the effectiveness of time accounting methods and directs OPM to ensure, by regulation, that necessary systems are in place.

#### CONCLUSION

The committee is convinced the use of alternative work schedules in Federal agencies frequently results in benefits for the public, agency management, and employees that might not otherwise be realized. Available empirical data and subjective surveys show benefits are most likely to result when both management and employees share a mutual commitment to the program. A review of the Federal alternative work schedules experiment authorized by Public Law 95-390 shows that alternative work schedules established under the program were overwhelmingly viewed as successful by both agencies and employees. Where specific experiments were not successful, further exploration of other types of alternate work schedules could result in the establishment of a beneficial program.

The committee's support for a system offering a broad range of schedules and encouraging exploration of various alternatives is bolstered by the success of the experiment. Therefore, the committee recommends permanently authorizing the alternative work schedules program.

#### SECTION ANALYSIS

##### FIRST SECTION

The first section provides that the Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1982".

##### SECTION 2

The second section amends chapter 61 of title 5, United States Code, by adding a new subchapter II, consisting of 12 new sections (5 U.S.C. 6121-6132). Unless otherwise noted, section references below are to sections of title 5, as added by the bill.

*Definitions*

Section 6121 of new subchapter II defines certain terms used in that subchapter.

Paragraph (1) defines the term "agency" to mean an Executive agency (see 5 U.S.C. 105) and a military department (see 5 U.S.C. 102). The term does not include the Postal Service or the Postal Rate Commission.

Paragraph (2) provides that "employee" has the meaning given it by section 2105 of title 5.

Paragraph (3) defines the term "basic work requirement" to mean the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

In view of the nature of a flexible schedule or compressed schedule experiment, any standard for determining what constitutes a regular work period must be adaptable to the particular flexible or compressed schedule. Accordingly, an employee's "basic work requirement" may be calculated on a daily, weekly, or biweekly basis depending on the hours which a particular employee is required to work or to otherwise account for. For example, at full-time employee working the standard 8-hour/5-day week has an 8-hour daily basic work requirement, a 40-hour weekly basic work requirement, and an 80-hour biweekly basic work requirement. An employee under a compressed schedule such as the 5-4-9 program, which consists of a 9-hour day/5-day workweek followed by an approximately 9-hour day/workweek has a 9-hour daily basic work requirement, one 45-hour weekly basic work requirement (first week), one 35-hour weekly basic work requirement (second week), and an 80-hour biweekly basic work requirement. Similarly an employee under a compressed schedule which consists of four 10-hour days each week, has a 10-hour daily basic work requirement, a 40-hour weekly basic work requirement, and an 80-hour biweekly basic work requirement.

The phrase "is required to work or is required to account for by leave or otherwise", indicates that in fulfilling a basic work requirement an employee may account for all or a portion of the required time through annual leave, sick leave, or other officially approved absence, or under a flexible schedule experiment, through credit hours.

Paragraph (4) defines the term "credit hours" to mean any hours within a flexible schedule which are in excess of the number of hours in an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or workday. Three requirements must be met before time worked qualifies as credit hours: (1) the hours worked must fall within the flexible schedule, i.e., within the designated hours during which an employee must be present for work or the designated hours during which an employee is permitted to elect a time of arrival and time of departure from work (see section 6122 discussed below); (2) the hours worked must be in excess of the employee's basic work requirement; and (3) the employee must elect to work the hours.

Paragraph (5) defines the term "compressed schedule" to mean: (A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 work days; and (B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours established for less than 10 days.



Paragraph (6) defines the term "overtime hours", when used with respect to flexible schedule programs, to mean all hours in excess of 8 hours in day or 40 hours in a week, which are officially ordered in advance. Since overtime hours are those hours of work ordered in advance, not those elected by the employee, overtime hours cannot include credit hours.

Paragraph (7) of section 6121 defines the term "overtime hours", when used with respect to compressed schedule programs, to mean any hours in excess of those hours which constitute the compressed schedule.

*Flexible schedules*

Section 6122 of new subchapter II authorizes agencies to use flexible schedules and sets forth specific requirements and conditions with respect to their use.

Section 6122(a) provides that flexible schedules may be used "[n]otwithstanding section 6101 of title 5, United States Code". Section 6101 of title 5 establishes certain requirements relating to work schedules and workweeks, one of which is that each agency head must establish a basic administrative workweek of 40 hours. This requirement precludes the use of flexible schedules designed to permit an employee to vary the length of a workweek. If the requirements of section 6101 conflict with a flexible schedule, those requirements shall be deemed inapplicable.

Paragraph (1) and (2) of section 6122(a) set forth requirements for flexible schedules. Paragraph (1) provides a flexible schedule must include designated hours during which an employee must be present for work. These designated hours are referred to as "core time".

Paragraph (2) provides flexible schedules must also include designated hours during which an employee may elect the time of arrival at and departure from work, for the purpose of varying arrival or departure times, or if and to the extent permitted, for the purpose of accumulating credit hours. These designated hours are referred to as "flexible hours". The last sentence of section 6122(a) provides that an employee's election with respect to his arrival or departure from work is subject to limitations generally prescribed, if any, to ensure that the duties and requirements of the employee's position are fulfilled.

Paragraph (1) of section 6122(b) provides that an agency flexible schedule program may be terminated by the Office if it determines the program is not in the best interest of the public, the Government, or the employees.

Paragraph (2) of section 6122(b) provides that if the head of an agency determines that any organization within the agency which is participating in a flexible schedule program is being substantially disrupted in carrying out its functions or is incurring additional costs because of participation in the program, the agency head may: (A) restrict the employee's choice of arrival and departure time; (B) restrict the use of credit hours; or (C) exclude from the program any employee or group of employees.

Section 6122(b) specifically provides that actions by the Office of an agency under paragraph (1) or (2) are subject to, and therefore governed by, the terms of any written labor-management agreement under section 6130(a) of new subchapter II.

*Compensation for overtime hours and nightwork*

Section 6123 of new subchapter II describes methods for computing premium pay for employees under a flexible schedule.

Section 6123(a) sets forth the method for determining compensation for overtime hours (as defined in section 6121(6), discussed above) worked under a flexible schedule.

Paragraph (1) of section 6123(a) permits liberal use of compensatory time off. (Compensatory time off, which permits an employee to exchange an amount of time spent in overtime work for an equal amount of time off, is analogous to credit hours.) Under existing law (5 U.S.C. 5543(a)(1)), compensatory time off may be granted only for time spent in irregular or occasional overtime work. Paragraph (1) provides an employee may request compensatory time for all overtime worked, not just that overtime which is irregular or occasional in nature. Compensatory time may be granted, upon request of the employee, notwithstanding the provisions of section 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, or section 7 of the Fair Labor Standards Act, as amended, each of which pertains to requiring premium pay for time worked in excess of 8 hours per day or 40 hours per week. Since compensatory time off may be granted only upon the request of the employee, the employee retains the right to receive overtime pay if it is preferable to compensatory time off. Paragraph (2) specifically states that unless an employee has requested and been granted compensatory time off, the employee shall be compensated for overtime worked in accordance with applicable provisions of law.

This legislation does not relieve an agency of its existing statutory obligation to compensate an employee for "overtime hours", i.e., those worked in excess of 8 hours in a day or 40 hours in a week. However, due to the permissive nature of a flexible work schedule which allows an employee to voluntarily extend his work hours to accumulate credit hours, an accommodation with existing statutory provisions relating to overtime entitlement is necessary.

For instance, section 554(a) of title 5, United States Code, relating to overtime rates, provides that "hours of work officially ordered or approved" shall be compensated as overtime. Section 6121(6) of new subchapter II, however, defines "overtime hours", for purposes of flexible schedules, as all hours in excess of 8 hours per day or 40 hours per week which are "officially ordered in advance". The requirement that overtime be ordered in advance eliminates the problem which would arise under a flexible schedule if an agency were required to determine, after the fact, whether it is appropriate to approve as "overtime", hours in excess of 8 hours per day or 40 hours per week which an employee voluntarily elected to work.

Similarly, section 7 of the Fair Labor Standards Act, as amended, provides that "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." Section 3(g) of that act provides that "'Employ' means to suffer or permit work." Thus, under that act an employee under a flexible schedule may not voluntarily extend the length of one workweek to reduce the length of a subsequent workweek.

Section 6123(b) of new subchapter II provides that notwithstanding the provisions of law referred to in paragraph (1) of section 6123(a), relating to compensation for overtime, an employee is not entitled to compensation for credit hours worked except to the extent authorized under section 6126 of new subchapter II, or to the extent he is allowed to have the credit hours taken into account with respect to his basic work requirement.

Section 6123(c) governs night-shift differentials for employees under flexible schedules. Premium pay for night work (night-shift differential) is authorized under several statutory provisions.

Section 5545(a) of title 5, United States Code, provides that night-shift differential shall be paid to employees subject to that section for all regularly scheduled work between the hours of 6 p.m. and 6 a.m. Under flexible schedules, the provisions of section 5545(a) would enable an employee to earn night-shift differential simply by arriving or departing, or working credit hours during those hours for which night-shift differential is required. Paragraph (1) of section 6123(c) prevents this situation from occurring. It does not, however, deny an employee night-shift differential for overtime hours worked during a period when it is authorized, or for hours which must be worked during such a period in order to fulfill a basic work requirement.

Paragraph (1) describes two situations in which the night-shift differential must be paid. Subparagraph (A) provides that if (i) the number of hours during which an employee must be present for work ("core time") plus (ii) the number of hours during which he may elect to work credit hours or elect the time of his arrival or departure ("flexible hours"), which occur outside the night work hours designated in or under section 5545(a) of title 5, total less than 8 full hours, the employee is entitled to night-shift differential for those hours worked between 6 p.m. and 6 a.m. which, when combined with such total, do not exceed 8 hours.

For example, if the flexible schedule is established from 11 a.m. to 11 p.m. with the employee required to be present during the period from 2 to 6 p.m., the maximum number of hours which the employee can work prior to 6 p.m. is 7 hours. Accordingly, the employee is entitled to night-shift differential for 1 hour worked between 6 p.m. and 11 p.m. since 1 hour must be worked during the night-shift period to complete an 8-hour day under the flexible schedule. If the employee, as a matter of personal preference, elects to work from 2 p.m. until 8 p.m., he still is entitled to only 1 hour of night-shift differential since under the flexible schedule, he could have worked 7 hours prior to 6 p.m.

If, on the other hand, the flexible schedule is established from 9 a.m. to 9 p.m. with employees required to be present from 12 noon to 3:30 p.m., an employee would have adequate opportunity to work 8 full hours prior to 6 p.m. If as a matter of personal preference an employee elected to begin work one day at noon and work until 9 p.m., there would be no entitlement to night-shift differential, although one credit hour would be earned.

A second situation in which an employee assigned to a flexible schedule is entitled to night-shift differential under section 5545(a) of title 5, is covered under subparagraph (B) of section 6123(c) (1). It provides that if an employee is on a flexible schedule under which the

hours during which he must be present for work ("core time") include any hours designated in or under section 5545(a) (night-shift differential for hours so designated).

Paragraph (2) of section 6123(c) relates to night-shift differential which, but for that paragraph, would be authorized for employees under section 5343(f) of title 5, United States Code, relating to night-shift differential for prevailing rate employees, or section 4107(e) (2) of title 38, United States Code, relating to night-shift differential for nurses in veterans' hospitals.

Under section 5343(f) a prevailing rate employee is entitled to night-shift differential if a majority of the hours of his regularly scheduled nonovertime work occur between the hours specified in that section. Under section 4107(e) (2), a nurse is entitled to a differential when at least 4 hours of regularly scheduled nonovertime work fall between the hours specified in that section.

Paragraph (2) of section 6123(c) preserves the existing statutory basis for entitlement to night-shift differential for employees subject to sections 5343(f) of title 5, and 4107(e) (2) of title 38, but provides those employees are not entitled to night-shift differential solely because they elect to work credit hours, or elect to arrive or depart at a time of day for which night-shift differential is otherwise authorized.

#### *Holidays*

Section 6124 of new subchapter II provides that notwithstanding sections 6103 and 6104 of title 5, United States Code, an employee under a flexible schedule who is prevented or relieved from working on a day designated as a holiday by Federal statute or Executive order is entitled to pay with respect to that day for 8 hours (or in the case of a part-time employee, an appropriate portion of the employee's bi-weekly basic work requirement, as determined under regulations prescribed by the Office).

Sections 6103 and 6104 of title 5, which govern pay for legal public holidays, speak in terms of "workday" and "day on which an ordinary day's work is performed". Under many flexible schedules, such terms have no fixed meaning since under those schedules the "workday" or "an ordinary day's work" many vary. Accordingly, section 6124 provides a fixed measure, i.e., 8 hours, for determining holiday pay for employees under a flexible schedule. This provision ensures that an employee's pay for a legal holiday under new subchapter II will be consistent with existing law.

#### *Time recording devices*

Section 6125 of new subchapter II provides that notwithstanding section 6106 of title 5, United States Code, an agency may use recording clocks as part of flexible schedule programs. Section 6106 prohibits the use by an agency of a recording clock in the District of Columbia.

#### *Credit hours; accumulation and compensation*

Section 6126 of new subchapter II limits the accumulation of credit hours by an employee under a flexible schedule and provides compensation for accumulated credit hours in the event an employee ceases to be subject to a flexible schedule.

Subsection (a) of section 6126 permits a full-time employee under a flexible schedule to carry over, subject to any limitation prescribed by the agency, a maximum of 10 credit hours from one biweekly pay period to a subsequent biweekly pay period. A limitation on the number of credit hours which may be carried over is necessary to ensure that credit hours are not accumulated and used as a basis for long term leave. Section 6126(a) also provides that accumulation of credit hours for part-time employees is on a pro rata basis, and those employees are entitled to accumulate and carry over a number of credit hours equal to one-eighth of a biweekly basic work requirement.

Subsection (b) of section 6126 provides compensation for unused credit hours for an employee who is no longer subject to a flexible schedule. A full-time employee is entitled to be paid at his then current rate of basic pay for not more than 10 accumulated credit hours. A part-time employee is entitled to compensation for those credit hours accumulated which are not in excess of one-eighth of his biweekly basic work requirement.

#### *Compressed schedules*

Section 6127 of new subchapter II authorizes agencies to use compressed schedules.

Section 6127(a) provides that compressed schedule programs may be used "[n]otwithstanding section 6101 of title 5, United States Code." Section 6101(a)(3) provides that except when the head of an agency determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he must, among other things, establish a 5-day/8-hour day workweek. This is inconsistent with the use of compressed schedules.

Section 6127(b) provides protections for employees when a majority of employees in a unit do not wish to participate in a compressed schedule program, or when participation would impose a personal hardship.

Paragraph (1) of section 6127(b) provides that an employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in a compressed schedule program unless a majority of employees in the unit who would be included in the proposed program have voted to be so included. (In the case of employees in a unit which has exclusive recognition, a program is subject to the terms of the negotiated agreement between the exclusive representative and the agency. See section 6130, discussed below.)

Paragraph (2) of section 6127(b) requires an agency to take certain steps, upon the request of an employee, if it determines that participation in a compressed schedule would impose personal hardship. To alleviate the personal hardship, the agency must (A) except the employee from the compressed schedule; or (B) reassign the employee to the first position within the agency (i) which becomes vacant after the determination of personal hardship has been made, (ii) which is not included within the program, (iii) for which the employee is qualified, and (iv) which is acceptable to the employee. The last sentence of section 6127(b)(2) requires that an agency make a personal hardship

determination within 10 days after written request for such a determination has been received.

Section 6127(c) of new subchapter II provides that notwithstanding any other provision of new subchapter II, a compressed schedule program may be terminated by the Office, or the agency, if it determines that the program is not in the best interest of the public, the Government, or the employees. Such termination, however, is subject to, and therefore governed by, the terms of any written agreement under section 6130(a), discussed below.

*Premium pay*

Section 6128 of new subchapter II governs premium pay for overtime hours worked by employees under compressed schedules.

Subsection (a) of section 6128 provides that the provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e) (5) of title 38, United States Code, and section 7 of the Fair Labor Standards Act, as amended, or the provisions of any other law relating to premium pay for overtime work, shall not apply to hours of work which constitute a compressed schedule. These sections generally require premium pay for work in excess of 8 hours in a day. Since a compressed schedule, by definition, entails workdays longer than 8 hours, the existing laws relating to overtime make these schedules, in terms of payroll costs, more expensive, than the standard 8-hour day/5-day workweek. Also by definition, a compressed schedule cannot consist of a basic work requirement of greater than 80 hours in any biweekly period, and section 6128(b) provides that hours worked in excess of the compressed schedule shall be overtime and shall be paid as provided under whichever statutory provisions referred in section 6128(a) of new subchapter II are applicable to the employee. In the case of a part-time employee working under the same compressed schedule as a full-time employee, overtime shall be paid after the same number of hours of work in a day after which a full-time employee receives overtime pay.

*Premium pay for Sunday work*

Section 6128(c) provides that notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, the employee is entitled to pay for work performed during the entire tour of duty at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay. Sections 5544(a), 5546(a), and 5550(1) of title 5, United States Code, each limit the premium pay differential for Sunday work to no more than 8 hours, as that period represents a basic workday for a full-time employee. Under a compressed schedule the daily basic work requirement normally consists of more than 8 hours and the 8-hour restriction on payment of premium pay is inequitable. Section 6128(c) ensures that employees on a compressed schedule receive Sunday premium pay for all hours worked on Sunday.

*Premium pay for holiday work*

Section 5546(b) of title 5, United States Code, provides that an employee who performs work on a holiday will not receive holiday pay for

work in excess of 8 hours, since hours worked in excess of 8 on any day, including a holiday, are compensated as overtime hours. Under a compressed schedule, the daily basic work requirement normally consists of more than 8 hours, and, as is the case with Sunday premium pay discussed above, the 8-hour restriction on payment of premium pay would be inequitable. Accordingly, section 6128(d) provides that notwithstanding section 5546(b) of title 5, an employee on a compressed schedule who performs work on a holiday designated by statute or Executive order is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for such work which is not in excess of his basic work requirement. If an employee works hours in excess of his basic work requirement, those hours would be overtime hours and section 6128(d) further provides that the employee is entitled to premium pay in accordance with applicable provisions of law relating to premium pay for such overtime hours.

*Administration of leave and retirement provisions*

Section 6129 of new subchapter II provides that for purposes of administering sections 6303(a), 6304, 6307(a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is under any flexible schedule or compressed schedule references to a day (or to multiples of parts thereof) contained in the above-stated sections shall be considered to be reference to 8 hours (or to the respective multiples thereof).

The current provisions in title 5, United States Code, relating to sick, annual, military, and funeral leave, and in some cases creditable service for retirement purposes, have as a frame of reference the 8-hour day with the result that the provisions are stated in terms of "days". Under either a flexible or a compressed schedule experiment the basic work requirement of a "day" could be more or less than 8 hours. Section 6129 translates the term "day" into an equivalent number of hours. This section neither decreases nor increases any employee's existing entitlement to leave, or to creditable service for retirement purposes. Part-time employees will continue to earn such entitlements on a pro rata basis.

*Application of experiments in the case of negotiated contracts*

Section 6130(a) of new subchapter II provides that employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included under any flexible or compressed schedule program except to the extent expressly provided under a written agreement between the agency and such organization.

The committee intends this section to preserve the provisions of existing negotiated agreements which deal with the establishment of hours of work and flexible and compressed schedules, or permit any party to such a contract to enter into negotiations in order to take advantage of any of the alternative work schedule programs. Where a labor organization has exclusive recognition, section 6130 requires the parties to the contract to negotiate the introduction or termination of any flexible or compressed schedule program.

Section 6130(b) prohibits any agency from participating in any flexible or compressed schedule program if there is an agreement in

effect which contains requirements to pay overtime which are inconsistent with the provisions of either section 6123 or 6128 or new subchapter II, as applicable. Sections 6123 and 6128, discussed above, establish the conditions for payment of overtime under flexible and compressed schedule programs. Therefore, any provisions of the contract which conflict with either section 6123 or 6128, as applicable, will have to be renegotiated for employees designated to participate in a program before the program may commence.

*Prohibition of coercion*

Section 6131 of new subchapter II provides protection against the coercion of employees concerning participation in flexible or compressed schedule programs. The committee recognizes the possibility that an overly zealous agency supervisor or manager who recognizes that certain payroll or other savings may accrue to his agency through the introduction or implementation of a flexible or compressed schedule could exert pressure on employees with regard to such introduction or implementation.

Accordingly, subsection (a) of section 6131 prohibits an employee from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce an employee for the purpose of interfering with: (1) the employee's rights under section 6122 and 6123 to elect the time of his arrival or departure, to work or not to work credit hours, or to request compensatory time off in lieu of payment for overtime hours; or (2) such employee's right under section 6127(b) (1) to vote whether or not to be included under a compressed schedule or such employee's right to request an agency determination as to personal hardship under section 6127(b) (2). Subsection (b) of section 6131 defines the terms "intimidate, threaten, or coerce" as including, but not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening any reprisal (such as deprivation of appointment, promotion, or compensation).

Existing law authorizing flexible and compressed schedule experiments provides procedures for disciplining employees who coerce other employees (see Public Law 95-390, section 303(b)). The passage of the Civil Service Reform Act of 1978 (Public Law 95-454) has made these procedures unnecessary. Under that Act, the Special Counsel of the Merit Systems Protection Board is responsible for investigating violations of civil service laws (see 5 U.S.C. 1206(e) (1) (D)), and the procedures for initiating disciplinary action in such cases, as well as the penalties which may be imposed, are spelled out (see 5 U.S.C. 1206, 1207).

*Regulations; technical assistance; program review*

Section 6132(a) requires the Office of Personnel Management to prescribe regulations necessary for the administration of flexible and compressed schedule programs.

Section 6132(b) (1) requires the Office to provide educational material, and technical aids and assistance, for use by agencies in connection with establishing and maintaining flexible and compressed schedule programs.

Section 6132(b) (2) provides that in order to provide the most effective materials, aids, and assistance, the Office shall conduct periodic



reviews of flexible and compressed schedule programs particularly insofar as those programs may affect: (1) the efficiency of Government operations; (2) mass transit facilities and traffic; (3) levels of energy consumption; (4) service to the public; (5) increased opportunities for full-time and part-time employment; and (6) employees job satisfaction and nonwork-life.

SECTION 3

Section 3 of the bill amends the chapter analysis for chapter 61 of title 5, United States Code, to reflect the addition of the new subchapter II of such chapter.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., February 10, 1982.*

HON. WILLIAM D. FORD,  
*Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5366, the Federal Employees Flexible and Compressed Work Schedules Act of 1982, as ordered reported by the House Committee on Post Office and Civil Service, February 10, 1982.

The bill will provide permanent authority for federal agencies to use flexible and compressed employee work schedules. Under current law, federal agencies have the authority to use flexible and compressed work schedules until March 29, 1982.

It is estimated that there will be little additional cost, and perhaps some initial savings, resulting from enactment of this bill. Since regulations and educational materials have already been developed, requirements of the bill relating to these items are not expected to have significant budgetary impact. The costs of reviewing agency programs will depend on the level of effort the Office of Personnel Management devotes to this requirement. Costs for this effort are not likely to exceed \$100,000 per year. In 1982, some savings might be realized because agencies won't have to undertake the administrative and educational tasks associated with changing to more restrictive work schedules when the current authorization expires in March.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH  
(For Alice M. Rivlin, Director).

NEW SPENDING AUTHORITY

H.R. 5366 does not provide "new spending authority" as that term is defined in section 401 of the Congressional Budget Act of 1974. As discussed above, the primary purpose of this legislation is to permit Federal agencies to use flexible and compressed schedules. The cost

of this legislation, as estimated by the Congressional Budget Office, will result from the employment of additional personnel and additional expenditures related to data processing, the authority for which is not provided by this legislation, but is contained in existing legislation.

#### OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Human Resources is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of the hearings on this legislation, the subcommittee concluded that there was ample justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c) (2) of House Rule X.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of House Rule XI, the committee has concluded that the enactment of H.R. 5366 will have no inflationary impact on the national economy.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

#### PART III—EMPLOYEES

\* \* \* \* \*

#### Subpart E—Attendance and Leave

#### CHAPTER 61—HOURS OF WORK

##### *Subchapter I—General Provisions*

Sec.

- 6101. Basic 40-hour workweek ; work schedules ; regulations.
- 6102. [Repealed.]
- 6103. Holidays.
- 6104. Holidays ; daily, hourly, and piece-work basis employees.
- 6105. Closing of Executive departments.
- 6106. Time clocks ; restrictions.

##### SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULE

- 6121. Definitions.
- 6122. Flexible schedules ; agencies authorized to use.
- 6123. Flexible schedules ; computation of premium pay.
- 6124. Flexible schedules ; holidays.
- 6125. Flexible schedules ; time-recording devices.
- 6126. Flexible schedules ; credit hours.

- 6127. Compressed schedules; agencies authorized to use.
- 6128. Compressed schedules; computation of premium pay.
- 6129. Administration of leave and retirement provisions.
- 6130. Application of programs in the case of negotiated contracts.
- 6131. Prohibition of coercion.
- 6132. Regulations; technical assistance; program review.

### ***Subchapter I—General Provisions***

#### **§ 6101. Basic 40-hour workweek; work schedules; regulations**

(a) (1) For the purpose of this subsection, "employee" includes an employee of the government of the District of Columbia and an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title, except as specifically provided under this paragraph.

\* \* \* \* \*

### ***Subchapter II—Flexible and Compressed Work Schedules***

#### **§ 6121. Definitions**

*For purposes of this subchapter—*

- (1) "agency" means an Executive agency and a military department;
- (2) "employee" has the meaning given it by section 2105 of this title;
- (3) "basic work requirement" means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;
- (4) "credit hours" means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;
- (5) "compressed schedule" means—
  - (A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and
  - (B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;
- (6) "overtime hours", when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours; and
- (7) "overtime hours", when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule.

**§ 6122. Flexible schedules; agencies authorized to use**

(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement under section 6130(a) of this title—

(1) any program under subsection (a) of this section may be terminated by the Office of Personnel Management if it determines that the program is not in the best interest of the public, the Government, or the employees; or

(2) if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(A) restrict the employees' choice of arrival and departure time,

(B) restrict the use of credit hours, or

(C) exclude from such program any employee or group of employees.

**§ 6123. Flexible schedules; computation of premium pay**

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act, as amended, or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c) (1) *Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day which such premium pay is otherwise authorized; except that—*

(A) *if an employee is on a flexible schedule under which—*

(i) *the number of hours during which such employee must be present for work, plus*

(ii) *the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,*

*which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and*

(B) *if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.*

(2) *Notwithstanding section 5343(f) of this title, and section 4107(e) (2) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this subchapter—*

(A) *in the case of an employee subject to such section 3543(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or*

(B) *in the case of an employee subject to such section 4107(e) (2), for which 4 hours of such schedule fall between the hours specified in such section.*

#### **§ 6124. Flexible schedules; holidays**

*Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employees' biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).*

#### **§ 6125. Flexible schedules; time-recording devices**

*Notwithstanding section 6106 of this title, the Office of Personnel Management or an agency may use recording clocks as part of programs under section 6122 of this title.*

#### **§ 6126. Flexible schedules; credit hours; accumulation and compensation**

(a) *Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such*

employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

**§ 6127. Compressed schedules; agencies authorized to use**

(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

(b) (1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such program; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such program,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(c) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement under section 6130(a) of this title, any program under subsection (a) may be terminated by the Office of Personnel Management, or the agency, if it determines that the program is not in the best interest of the public, the Government, or the employees.

**§ 6128. Compressed schedules; computation of premium pay**

(a) The provision of sections 5542(a), 5544(a), and 5550(2) of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act, as amended, or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to

be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended, whichever provisions are more beneficial to the employee.

#### **§ 6129. Administration of leave and retirement provisions**

For purposes of administering section 6303(a), 6304, 6307(a) and (c), 6323, 6326, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

#### **§ 6130. Application of programs in the case of negotiated contracts**

(a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any program under this subchapter except to the extent expressly provided under a written agreement between the agency and such organization.

(b) An agency may not participate in a flexible or compressed schedule program under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.

#### **§ 6131. Prohibition of coercion**

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under section 6122 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

(b) *For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).*

**§ 6132. Regulations; technical assistance; program review**

(a) *The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.*

(b) (1) *The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.*

(2) *In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—*

- (1) the efficiency of Government operations;*
- (2) mass transit facilities and traffic;*
- (3) levels of energy consumption;*
- (4) service to the public;*
- (5) increased opportunities for full-time and part-time employment; and*
- (6) employees' job satisfaction and nonworklife.*